Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

EDWARD V. CALLICO AND LEA ANN CALLICO

Petitioners,

v.

CITY OF BELLEVILLE, IL, a municipal corporation; John Kildea, individually and in his official capacity; Michael Eckert individually and in his official capacity; Joseph Stumpf, individually and in his official capacity; William Sax, individually and in his official capacity; Paul Bauman, individually and in his official capacity; and Patricia Doerr individually and in her official capacity; and Others Unknown 1-20,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Edward V. Callico
Lea Ann Callico
613 East "A" Street
Belleville, IL 62220
618-234-9911
Pro Se Petitioners

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state case removed based on 28 USC §§ 1331, 1343, and 1441, should be remanded and not dismissed if the Rooker Feldman Doctrine is found on inextricable intertwined claims, pursuant to 28 U.S.C §1447(c)?

2. Whether it is an abuse of discretion for dismissing with prejudice without any warning, under Fed. R. Civ. P. 41(b), when the court order was for filing an amended complaint when there is no egregious behavior?

3. Whether implementation of computerization in the judicial system has set unfair disadvantages for pro se litigants, mainly by not allowing sufficient time for the U.S. Mail filings from the Courts to file a Stay for the Mandate?

PETITIONERS EDWARD V. CALLICO AND LEA ANN CALLICO'S STATEMENT OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

The parties are listed in the caption of this case.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Edward V. Callico and Lea Ann Callico ("Callicos") hereby respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case, which was entered June 22, 2004.

OPINIONS BELOW

The 7th Circuit Court of Appeal's Order (Per Curiam, Hon. William J. Bauer, Hon. Frank Easterbrook, Hon. Ann Clair Williams), dated June 22, 2004, denying the Callicos motion to reconsider, is unpublished. It is reprinted in the Appendix at App. A-1. The Court of Appeals' Order (App. A-2 to A-7) is unpublished. (7th Cir. 2004). The Southern District's Orders are also in the Appendix.

JURISDICTIONAL STATEMENT

The Court of Appeals entered its judgment on May 25, 2004. It denied Callico's timely petition for rehearing on June 22, 2004.

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the United States Code are 28 U.S.C. §1331, 28 U.S.C. §1367, 28 U.S.C. §1441(a), and 28 U.S.C. §1447(c). Illinois 65 ILCS 5/11-31-1 is reproduced at App. A-19 through A-21.

STATEMENT OF THE CASE

In June, 2001, the "Callicos", filed this suit pro se in Twentieth Circuit Court, State of Illinois, (Case No. 01-L-395) initially against The City of Belleville and John Kildea.

At that same time, the Callicos were defendants in a suit filed by the City of Belleville in 1997, pursuant to Illinois Statute 65 ILCS 5/11-31 and undisclosed local ordinances for demolition on two pieces of real estate property owned by the Callicos. The Callicos, pro se, obtained counsel on the Motion to Reconsider (which was not granted) and the appeal. Although the Motion to Reconsider was for two homes, the appeal was just for one. Even with the demolition order, the City chose not to demolish the one home. The final judgment on the demolition case was in late 2001, after the Callicos had filed their original suit in state court.

The Complaint for Case No. 01-L-395 was amended before the State Court heard the Defendants' Motion to Dismiss. The State Court did not grant the Motion to Dismiss, but required the City to depose the Callicos. The Callicos depositions were taken in March 2002, along with a partial exchange of discovery requests. The Callicos compelled to State Court for the City to produce their witnesses for depositions. After the depositions in June 2002 of Michael Eckert, Joseph Stumpf, William Sax, Paul Bauman, and Patricia Doerr (all City employees assigned to the housing department), the Callicos filed their Fourth Amended Complaint which added the individuals.

The core allegations of the complaint were that of violation of civil rights guaranteed by the Fourth, Fifth and Fourteenth Amendment to the United States and the State of

Illinois Constitution, pursuant to Title 42, Section 1983 and 1985; special duty of the City of Belleville, conspiracy, fraud and misrepresentation, duress, negligence, malicious prosecution and abuse of process, tortious interference with economic advantage of Callicos business, false arrest, malicious prosecution and abuse of process under Section 1983, failure to train under Section 1983, unconstitutional local ordinances and Illinois State Statute 65 ILCS 5/11-31-1 under 1983 as written and applied. These allegations are for actions against several pieces of real estate property, including Callicos business, Callicos business location and the two real estate properties subject in the City's demolition proceedings.

The City then removed the Fourth Amended Complaint to the Federal District Court for the Southern District of Illinois on September 30, 2002, and answered the complaint. The Court denied Callicos request for remand back to State Court, even though it contained complex state issues pursuant to 65 ILCS 5/11-31, on the grounds of economy ("that it would be easier for pro se litigants to litigate all claims together").

On June 4, 2002, the Callicos had filed a similar, but different complaint in the Federal District Court against the City of Belleville, John Kildea, Michael Eckert and Unknowns 1-20. A First Amended Complaint was filed on October 25, 2002, alleging unconstitutional ordinances as written and applied for warrantless, nonconsentual housing inspections, for arbitrary and capricious decisions of housing department employees in their notices and forms of code violations, process of appeal for code violations and lack of utilization of an appeal board, the manner in which the City applies its housing ordinances for forms and notices, permits and inspections; and for building permits requiring a

mandatory two year occupancy of owner under the U.S. Constitution.

The Court granted respondents request to have the two cases consolidated and took supplemental jurisdiction pursuant to USC §1367(a). The Defendants answered the Callicos Combined Complaint and filed affirmative defenses that the Callicos timely objected to.

On the last day of discovery, respondents allowed for review thousands of documents previously requested. After the close of discovery, respondents filed a motion for summary judgment for Rooker Feldman, res judicata, collateral estoppel, qualified immunity and immunity pursuant to the Illinois Local Government Employees Tort Immunity Act, statute of limitations, and that Callicos had failed to present evidence in support of their claims.

The District Court granted partial summary judgment on April 1, 2003 for Rooker Feldman and issued a final order and judgment on April 22, 2003 disposing of all claims against all defendants for Callicos not following a court order regarding the amended complaint, without any warning. Post trial motions were denied.

On May 25, 2004, the United States Court of Appeals for the Seventh District affirmed the District Court's decision, holding that the claims were too inextricable intertwined with those of the state court; App. A-2 to A-7. The Seventh Circuit denied Callicos motion for rehearing on June 22, 2004. App. A-1.

REASONS FOR GRANTING THE PETITION

1. **Whether a state case removed based on 28 USC §§ 1331, 1343, and 1441, should be remanded and not dismissed if the Rooker Feldman Doctrine is found on inextricable intertwined claims, pursuant to 28 U.S.C §1447(c)?**

In this case, the district court and the Court of Appeals dismissed the Petitioner's removed claims, for lack of subject-matter jurisdiction, pursuant to the Rooker Feldman Doctrine on summary judgment by Respondent.

Respondent's removal for the case was based that federal jurisdiction was proper based upon jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and removal 28 U.S.C.§1441.

Nothing can cure a lack of subject matter jurisdiction that existed at the time of filing or removal, since subject matter jurisdiction depends upon the state of the facts that existed at the time of filing.

This Court has long adhered to the rule that subject-matter jurisdiction depends upon the state of facts that existed at the time of filing.

While the district court and Court of Appeals have said considerations of efficiency and economy become overwhelming, it does not augur a new approach to deciding whether a jurisdictional defect has been cured.

Even in diversity jurisdiction, this Court ruled in *Grupo Dataflux vs. Atlas Global Group, L.P., et al. , 541*

U.S. __ (2004) On Writ of Certiorari to the US Court of Appeals for the Fifth Circuit, No. 02-1689, the state of facts that existed at the time of filing hold jurisdiction.

This Court has squarely rejected the argument that there is an implicit "futile exception" hidden behind the plain meaning of 28 U.S.C. §1441(c). *See International Primate Protection League vs. Administrators of Tulane Educational Fund, 500 U.S. 72, S.Ct. 1700, 114 L.Ed.2d 134 (1991).* (But the fact that we believe a certain legal result unlikely, as a matter of state law, is not sufficient grounds for reading an exception into the absolute statutory words "shall be remanded".)(emphasis in original).

In any case the point of 28 U.S.C. §1441(c) is that a federal court does not have the authority to dismiss a claim over which it never had jurisdiction in the first instance.

Refusal to remand, if erroneous, was reviewable ordinarily after final judgment, and also in connection with reviewable interlocutory order. *Schell v. Food Machinery Corp.* (1937, CA5 Fla) 87 F2d 385, cert den. 300 US 679, 81 L Ed 883, 57 S. Ct. 670. Proper remedy for lack of subject matter jurisdiction in case removed from state court is not dismissal, but rather it is remand. 28 U.S.C. §1447

To determine whether jurisdiction fails under the Rocker Feldman doctrine, we consider "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Edwards v. Ill. Bd. of Admissions to the Bar,* 261 F.3d 723, 729 (7th Cir.2001). The question, then, is whether the asserted injury is "inextricably intertwined" with the judgment of the state court, precluding a federal court from reviewing its merits.

Manley v. City of Chicago, 236 F.3d 392, 396 (7th Cir.2001).

However, "the fact that the plaintiff's pursuit of [her] federal claims could ultimately show that the state court judgment was erroneous [does] not automatically make Rooker Feldman applicable." *Long,* 182 F.3d at 555-56. Rather, the appropriate question is whether "the federal plaintiff [is] seeking to set aside a state court judgment, or does [s]he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party." *GASH Assoc. v. Village of Rosemont,* 995 F.2d 726, 728 (7th Cir.1993).

Under the 28 U.S.C. §1331, the jurisdictional statute, a court does not need to determine if the claim is meritorious before determining if the court has jurisdiction. The Rooker Feldman doctrine bars claim, and, because that doctrine is jurisdictional, the district court had no power to address the affirmative defense of collateral estoppel. *See Centres, Inc. v. Town of Brookfield, Wis.,* 148 F.3d 699, 703 (7th Cir.1998).

28 U.S.C. §1367 provides a final statutory basis for remanding a claim to state court. 28 U.S.C. §1367 provides that "(t)he district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress. If the district court determines that it is barred by the Rooker Feldman doctrine, then it did not have original jurisdiction and therefore should have remanded back when the case was first removed from state court or upon determining Rooker Feldman.

The lack of jurisdiction over some claims in the case precluded removal of the action as a whole, because §1441(a) confers removal jurisdiction only where the district

court has the authority to adjudicate all of the claims in the case. *Frances J. v. Wright*, 19 F.3d 337 (7th Cir.1994).

Under the 28 U.S.C. §1331, the jurisdictional statute, a court does not need to determine if the claim is meritorious before determining if the court has jurisdiction.

If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. (Emphasis added). Furthermore, in *Smith v. Wisconsin Dept. of Agriculture*, 23 F.3d 1134, 1139 (7th Cir.1994) it rejected an identical "futility" argument, instead holding that remand was required even if the state court would only respond by dismissing the remanded claims.

The Rooker Feldman doctrine rests on principle that district courts have only original jurisdiction; *Zuirch American Ins. Co. V. Superior Court for State of California* 326 F.3d 817.

The First Circuit squarely found in *Mills vs. Harmon, 344 F.3d 42 (2003)* that with the application of the Rooker Feldman doctrine the district court abused its discretion by dismissing the complaint with prejudice after determining that it lacked subject matter jurisdiction.

The scarcity of this Courts opinions discussing the Rooker Feldman doctrine contracts sharply with the doctrine's treatment in the lower federal courts, which have created a confusing and sometimes contradictory body of precedent and are misapplying the doctrine.

Clarification of the role of the courts and would resolve a practical and analytical disagreement between the Seventh and the First District.

These distinctions do not exist in any other source, and this Court's clarification of the importance of following the statutory scheme will resolve this and other disagreements among the courts of appeals.

2. **Whether it is an abuse of discretion for dismissing with prejudice without any warning, under Fed. R. Civ. P. 41(b), when the court order was for filing an amended complaint when there is no egregious behavior?**

In this case, the district court and the Court of Appeals dismissed the Petitioner's remaining claims, with prejudice, without warning, under Fed. R. Civ. P. 41(b) for not following a court order. The court order was for filing an amended petition on the remaining claims after the summary judgment ruling.

The district court did not allow the amended complaint to be filed on record, therefore the Court of Appeals did not view or have the opportunity to view the amended complaint. Although in accordance with Fed. R. Civ. P. 8, a complaint should contain "a short and plain statement of the claim showing that the pleader is entitled to relief," the Seventh District lacked foundation for its conclusion in reviewing the original complaint. There is no factual findings or evidence on the record of any egregious behavior of the Callicos and the circumstances of this case.

It is a harsh sanction to dismiss with prejudice, without warning, and measurable for abuse of discretion.

This Court previously has recognized – even with respect to another statute the legislative history of which indicated that courts were to have "wide discretion exercising their equitable powers," *118 Cong.Rec. 7168 (1972), quoted in Albemarle Paper Co. v. Moody, 422 U.S. 405, 421, 95 S.Ct. 2362 2373, 45 L.Ed.2d 280 (1975)*- - that discretionary choices are not left to a court's inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *Id., at 416, 95 S.Ct. , at 2371, quoting United States v. Burr, 25 F.Cas.30, 35 (No. 14,692d)(CC Va. 1807) (Marshall, C.J.).* Thus, a decision calling for the exercise of judicial discretion "hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review." *Albemarle Paper Co., 422 U.S., at 416, 95 S.Ct., at 2371.*

Whether discretion has been abused depends, of course, on the bounds of that discretion and the principles that guide its exercise. Had Congress merely committed the choice of remedy to the discretion of district courts, without specifying factors to be considered "all relevant public and private interest factors," and to balance those factors reasonably, then no review would be permitted.

As in *U.S. vs. Taylor, 487 U.S. 326, 108 S.Ct. 2413,* this Court should determine the abuse of the district's court discretion to choose between dismissal with prejudice and dismissal without prejudice, as a remedy for a violation of not complying with a court order.

Dismissal as a sanction is only appropriate when the noncomplying part acted with willfulness, bad faith or fault.

Marroco v. General Motors Corp., 966 F.2d 220. Fault does not include conduct that would classify as a mere mistake or slight error in judgment.

3. **Whether implementation of computerization in the judicial system has set unfair disadvantages for pro se litigants, mainly by not allowing sufficient time for U.S. mail filings from the Courts to file a Stay for the Mandate?**

In this case, the Seventh District Court denied the Callicos motion for rehearing on June 22, 2004. App. A-2 through A-5. However, they mailed the Order on June 24, 2004 App. A-33. This delay in mailing did not allow enough time for the Callicos to Stay the Mandate.

Understanding that computerization is the future is imperative for all of us, however, understanding how procedures need adjusting to computerization is critical for efficient dispensing of justice.

Office personnel have new procedures for dispensing information onto the computer, while timely U.S. Mailings do not hold the same weight that they once did, prior to complete computerization.

Clarification and review of new procedures of the courts would resolve any unfortunate prejudice to pro se litigants. These distinctions do not exist in any other source, and this Court's clarification of the importance of following

statutory or changing statutory standards will resolve this situation.

CONCLUSION

The opinions of the Court of Appeals are inconsistent with themselves and with the rulings of this Court on Rooker Feldman. If a district court finds they lack subject matter jurisdiction due to the Rooker Feldman doctrine, the case should be remanded and not dismissed. Consistency among the courts of appeals concerning the application of the removal statutes and the respective roles of the courts is necessary to ensure that justice prevails.

An abuse of discretion should be reviewed for the dismissal with prejudice, even without a warning, the lack of foundation for the decisions should be reviewed.

Finally, computerization is the future. However, procedures need adjusting to accommodate computerization and is critical for efficient dispensing of justice.

Action by this Court is necessary to achieve these consistencies. Callicos therefore respectfully requests that this Court grant this petition for a writ of certiorari.

Respectfully submitted,

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Pro Se Appellants

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

June 22, 2004

Before

Hon. William J. Bauer, *Circuit Judge*

Hon. Frank H. Easterbrook, *Circuit Judge*

Hon. Ann Claire Williams, *Circuit Judge*

Nos. 03-2845 & 03-2846	)Appeal from the United States
	)District Court for the
EDWARD V. CALLICO	)Southern District of Illinois.
LEA ANN CALLICO,	)
Plaintiffs-Appellants,	) Nos. 02 C560 & 02 C1043
v.	)
CITY OF BELLEVILLE,	)G. Patrick Murphy,
JOHN KILDEA, et al.	)Chief Judge
Defendants-Appellees.)	

ORDER

On consideration of plaintiffs-appellants motion for rehearing/reconsideration filed in the above-captioned case on June 8, 2004, all of the judges on the original panel have voted to deny. The petition for rehearing is therefore DENIED.

APPENDIX B

Unpublished Order

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Submitted May 25, 2004*

Decided May 25, 2004

Before

Hon. William J. Bauer, *Circuit Judge*

Hon. Frank H. Easterbrook, *Circuit Judge*

Hon. Ann Claire Williams, *Circuit Judge*

Nos. 03-2845 & 03-2846**	)Appeal from the United States
	)District Court for the
EDWARD V. CALLICO	)Southern District of Illinois.
LEA ANN CALLICO,	)
Plaintiffs-Appellants,	)Nos. 02 C560
v.	)
CITY OF BELLEVILLE,	)G. Patrick Murphy,
JOHN KILDEA, et al.	)Chief Judge
Defendants-Appellees.)	

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* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the records. See Fed. R. App. P. 34 (a)(2).

** Although this case has two docket numbers, there is only one underlying appeal. The second number was assigned when the appellants filed an amended notice of appeal. The second filing fee has been waived.

ORDER

This case, beginning as a municipal zoning dispute, eventually spilled over into both state and federal court, and was ultimately consolidated into a 506-paragraph combined complaint. Several principals contributed to the case's resolution, including the Rooker-Feldman doctrine, the statute of limitations, and the court's ability to enforce its order under Fed. R. Civ. P. 41(b). We affirm.

In June 1998, an Illinois state court determined that a house owned by Edward and Lea Ann Callico was unfit for occupancy. Finding the Callicos unable or unwilling to fix it, the court authorized its demolition. The state appeals court upheld the order, and the City of Belleville demolished the building in November 2001.

By then, the Callicos had filed their own state-court lawsuit against the City and its former building and zoning commissioner, alleging "harassment" in the events leading up to the demolition. Originally filed on June 29, 2001, the complaint contained one count and 32 paragraphs. By September 2002, it had become a 21-count Fourth Amended Complaint spanning 120 pages and alleging wrongdoing by half a dozen defendants. Extensive discovery ensued.

Meanwhile, the Callicos filed an almost identical complaint in federal district court. When the defendants were notified of the new federal lawsuit, they removed the state case to federal court, requested consolidation, and eventually moved for summary judgment.

At a hearing on the summary judgment motion, the district court observed that most of the Callicos' allegations appeared to concern actions taken either in preparation for or in execution of the state-court demolition proceedings, and pointed out that claims based on such actions are barred by the Rooker-Feldman doctrine, which prohibits federal courts from reviewing state-court proceedings, and only two of those were not barred by the statute of limitations. Ordering

all other claims dismissed without prejudice (except for the time-barred claim, which was dismissed with prejudice), the court gave the Callicos ten days to file a new complaint, which, the court instructed them, should include only claims based on the two remaining incidents.

The Callicos did not follow that instruction. Instead, they submitted a 37 page, nine-count amended complaint that repeated many of the allegations and claims the court had already dismissed. Finding the Callicos' disregard of its instructions inexcusable, the court dismissed their case with prejudice under Fed. R. Civ. P. 41(b) for failure to follow an order of the court.

On appeal, the Callicos challenge the court's dismissal of their case, claiming that they are "not sure exactly what part of the court order they have not followed." But the court's reason was quite plain; they had failed to restrict their amended complaint to the two claims the court had determined were still viable. The Callicos protest that the inclusion of the superfluous material in a complaint is not a sufficient ground for dismissal: "However prolix the [amended] pleadings may be, it is likely that the court would strike any scandalous matter, but most courts would not dismiss a pleading for prolixity" (citing *Davis v. Ruby Foods, Inc.*, 269 F.3d 818, 821 (7th Cir. 2001)). But the court was not objection to the "mere presence of extraneous matter" in the complaint, *Davis*, 269 F.3d at 821, but rather to the Callicos' outright defiance of its instruction to restrict the complaint to two specific claims.

The district court hinted at a deeper problem, however, pointing out that it had "made a substantial effort to understand the various theories of recovery advanced by [the Callicos] and took considerable time explaining to them how their claims should be presented under federal notice pleading standards." Under Fed. R. Civ. P. 8, a complaint should contain "a short and plain statement of the claim showing that the pleader is entitled to relief." We look in

vain for such a statement among the 506 paragraphs of the Callicos' combined complaint. The resulting difficulty is more than technical: "Length may make a complaint unintelligible, by scattering and concealing in a morass of irrelevancies the few allegations that matter." *United States ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003).

It can also make appellate review more difficult. For example, the Callicos argue that the court erred in finding all but three of their claims barred by the Rooker-Feldman doctrine. They correctly point out that the doctrine does not necessarily doom a claim that touches upon issues litigated in a state-court proceeding. See, e.g., Gen. Auto Serv. Station LLC v. City of Chicago, 319 F.3d 902, 905 (7th Cir. 2003)("[A] protest . . . concerning the adversary's pre-litigation conduct rather than an injury caused by a judicial decision ... is unaffected by the Rooker-Feldman doctrine."). It could well be that some of the incidents the Callicos have alleged escape the doctrine's reach, but we are at a loss to discern precisely which ones. We struggle even to identify the basic contours of their story, let alone which elements of that story are not "inextricably intertwined" with the state-court demolition proceedings.

It hardly matters, though. As best we can tell, everything of which the Callicos complain (with only the two exceptions identified by the district court) took place before June 29, 1999, two years before the Callicos filed their lawsuit in the state court. There is a two-year statute of limitations in Illinois for civil rights claims under 42 U.S.C. § 1983, see *Wiley v. City of Chicago*, 361 F.3d 994, 996 (7th Cir. 2004), and a one-year limit for tort claims against a municipal entity, see 745 ILCS 10/8-101(a). So even if we were able to identify claims that the district court improperly dismissed under Rooker-Feldman, those claims would nevertheless be time-barred, and thus subject to dismissal with prejudice. The Callicos' attempt to get around the limit

by alleging that they learned of the injuries only in January 2001 or that there was some sort of "continuing violation" are patently frivolous.

Of the Callicos' remaining arguments, only one merits discussion. When it dismissed their claims for want of jurisdiction under Rooker-Feldman, the district court explained that any challenge to the state-court demolition proceeding needed to brought in state court, but was removed to federal court by the defendants. They argue that the district court, finding itself without jurisdiction over some of their claims, should have remanded those claims to state court rather than dismissing them.

It is true that under 28 U.S.C. §1447(c), "[if] at any time before final judgment it appears that the district court lacks subject matter jurisdiction over a case that has been removed from state court, "the case shall be remanded." *See Mills v. Harmon Law Offices, P.D.,* 344 F.3d 42, 45-46 (1st Cir. 2003) (vacating dismissal with prejudice under Rooker-Feldman where case had been removed from state court). We doubt that the state courts will be receptive to this sort of collateral attack, but that is not for us to decide. *See Durgins vs. City of East St. Louis*, Ill. 272 F.3d 841, 843 (7th Cir. 2001) state law governs preclusive effect of state-court judgments); *Mills*. 344 F.3d at 46 (ordering remand even though case appears to have "little future"). We are nevertheless persuaded that dismissal was appropriate in this case. Not only was the dismissal without prejudice (and, according to the defendants, the Callicos have re-filed their claims in state court), but the case was removed only because the Callicos themselves filed a nearly identical lawsuit in federal court. Having done so, they were and are in no position to protest that their claims properly belong in state court. *Cf. Key Outdoor Inc. v. City of Galesburg, Ill.* 327 F.3d 549, 550 (7th Cir. 2003) (defendants who removed suit to federal court cannot oppose remand based on plaintiffs' failure to exhaust state remedies). AFFIRMED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

EDWARD and LEE ANN CALLICO
Plaintiffs,
Vs.
CITY OF BELLEVILLE, ILLINOIS
A municipal corporation, et al.
Defendants. No. 02-CV-1043-DRH

MEMORANDUM AND ORDER

Herndon, District Judge:

Pro se Plaintiffs Edward and Lee Ann Callico filed a Fourth Amended Complaint in the Circuit Court of St. Clair County, Illinois. Counts one, two, four, five, sixteen, seventeen, eighteen, nineteen, twenty and twenty-one arise under 42 U.S.C. §1983. Defendants filed a Notice of Removal shortly after being served, asserting federal subject matter jurisdiction. Defendants also moved to consolidate the is case with another case currently pending, 02-CV-0560-GPM (Doc. 5). Plaintiffs then moved to remand the case to state court (Doc. 6), and requested oral argument on both the remand and consolidation issues. (Doc. 7). The written materials demonstrate that there are no exceptional circumstances present and no need for oral argument. The Court DENIES the request (Doc. 7).

28 U.S.C. §1331 provides that "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Several counts in this action arise under one of the laws of the United States. 42 U.S.C. §1983. Further, the

remaining state-law claims are so related to the federal claims as to form part of the same case or controversy, so the Court has supplemental jurisdiction per 28 U.S.C. §1367(a). The Court therefore DENIES the Plaintiffs' motion to remand (Doc. 6).

Also before the Court is the Defendant's motion to consolidate this case with another case now pending (Doc. 5). That case has the same plaintiffs and many of the same defendants, and is assigned the following number: 02-CV-0560-GPM. The Court has reviewed the relevant complaints in both cases with great care. The facts alleged and issues raised in the two cases are extremely similar, and in many respects identical. Moreover, Plaintiffs stated in their response to this motion that "possibly it would be easier for inexperienced pro se litigants to have all claims (state and federal) litigated together, conceivably it would be more economical." (Doc. 6). The Court agrees.

Federal Rules of Civil Procedure 42(a) authorizes consolidation of "actions involving a common question of law or fact." Further, related cases should be transferred to or consolidated before a single District Judge. *See, e.g., Smith v. Check-N-Go of Illinois, Inc.*, 200 F.3d 511, 513 n. 1 (7th Circ. 1999); *Blair vs. Equifax Check Services, Inc.*, 181 F.3d 832, 839 (7th Cir. 1999). Accordingly, pursuant to Rule 42(a), the Court GRANTS the Defendants' motion (Doc. 5) and hereby CONSOLIDATES case number 02-CV-1043-DRH with the earlier-filed case of 02-CV-0560-GPM, assigned to United States District Judge G. Patrick Murphy.

CONCLUSION

The Court DENIES the Plaintiffs' request for oral argument. (Doc. 7). The Court also DENIES Plaintiffs' motion for remand (Doc 6). The Court GRANTS the Defendants' motion for consolidation (Doc. 5), and hereby CONSOLIDATES case number 02-CV-1043-DRH with 02-

CV-0560-GPM. All further pleadings will bear the number 02-CV-0560-GPM.

IT IS SO ORDERED.

Signed this 5th day of December, 2002.

DAVID R. HERNDON

UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

EDWARD and LEE ANN CALLICO
Plaintiffs,
vs.
CITY OF BELLEVILLE, ILLINOIS
A municipal corporation, et al.
Defendants. No. 02-CV-560-GPM

MEMORANDUM AND ORDER

MURPHY, Chief District Judge:

This matter is before the Court on Defendants' motion to consolidate this action with a related case pending in this District Court bearing civil case number 02-1043-DRH (Doc. 5). Although Plaintiffs, who are proceeding pro se, contend that they oppose the motion, they concede that "[p]ossibly it would be easier for inexperienced pro se litigants to have all claims (state and federal) litigated together, conceivably it would be more economical" (Doc. 9). This Court agrees; therefore, Defendants motion to consolidate is GRANTED. It is ORDERED that civil case number 02-1043-DRH is hereby CONSOLIDATED with this earlier filed action. All further pleadings shall bear civil case number 02-560-GPM and shall be filed in this action. Because some of Plaintiffs' claims in the two complaints appear duplicative, Plaintiffs are ORDERED to file in this action a single Consolidate Complaint encompassing all of their claims against Defendants on or before December 30, 2002. They shall not include any duplicative claims.

Consequently, Defendants' motion to dismiss on that basis, which was filed in this action on November 25, 2002 (Doc. 13) is DENIED as moot.

IT IS SO ORDERED.

Dated this 4th day of December, 2002.

G. PATRICK MURPHY

CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MINUTES OF COURT

Presider: Hon. G. Patrick Murphy, U.S. District Judge

DATE: March 31, 2003

TIME: 2:35 p.m. – 3:30 p.m.

COURTROOM DEPUTY: Linda Cook

COURT REPORTER: Molly Clayton

EDWARD and LEA ANN CALLICO

Plaintiffs,

vs.

CITY OF BELLEVILLE, ILLINOIS

A municipal corporation, et al.

Defendants. No. 02-CV-560-GPM

Counsel for Plaintiff(s): Pro Se

Counsel for Defendant(s): Bernard Ysursa, Heinz Rudolf, Julie Bruch, All remaining defendants

PROCEEDING: ALL PENDING MOTIONS

Plaintiffs appear pro se. Counsel for defendants appear. Arguments heard on the motion for summary judgment (Doc. 44) filed by defendants, and the motion is GRANTED in part and DENIED in part. Plaintiffs are granted leave to file an amended complaint within 10 days. Defendants shall

file their answer within 10 days thereafter. All other pending motions (Docs. 40, 47, 62) are DENIED as moot. Written Order to follow.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

EDWARD and LEA ANN CALLICO	)	
Plaintiffs,	)	
vs.	)	
CITY OF BELLEVILLE, ILLINOIS	)	02-CV-560
A municipal corporation, et al.	)	GPM
Defendants.	)	

MEMORANDUM AND ORDER

MURPHY, Chief District Judge:

This matter came before the Court on March 31, 2003, for a hearing on all pending motions. Predominately, the Court heard argument on Defendants' motion for summary judgment. The standard applied to summary judgment motions filed under Federal Rule of Civil Procedure 56 is well-settled and has been succinctly stated as follows:

> Summary Judgment is proper when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether a genuine issue of material fact exists, [the court] must view the records in alight most favorable to the nonmoving party. Because the primary purpose of summary judgment is to isolate and dispose of factually unsupported claims the nonmovant may not rest on the pleadings but must respond, with

> affidavits or otherwise, setting forth specific facts showing that there is a genuine issue for trial. The evidence must create more than some metaphysical doubt as to the material facts. A mere scintilla of evidence in support of the nonmovant's position is insufficient; a party will be successful in opposing summary judgment only when it presents definite, competent evidence to rebut the motion.

Albeiro v. City of Kankakee, 246 F.3d 927, 931-32 (7th Cir. 2001)(internal citations and quotations omitted).

Plaintiffs' pro se complaint alleges violations of their constitutional and civil rights under 42 U.S.C. §§1983 and 1985 and various claims under state law. (Doc. 29). Generally, Plaintiffs complain about Defendants' conduct relating to the duties and responsibilities of the housing authorities that preside over property in the City of Belleville, Illinois. In fact, much of the conduct of which Plaintiffs complain culminated in demolition actions filed against Plaintiffs for property located at 607 East A Street and 519 South 3rd Street. The St. Clair County, Illinois, judge presiding over the demolition proceedings ordered demolition of the properties. Plaintiffs appealed the state court judgment with respect to the property at 607 East A Street, and the appellate court affirmed the judgment in July 2001. Thereafter, Plaintiffs filed this case.

The Rooker-Feldman doctrine, named after *Rooker v. Fiedelity Trust Company,* 263 U.WS. 413 (1923) and *District Court of Appeals v. Feldman*, 460 U.S. 462 (1983), stands for the principle that decisions of state courts may not be challenged in litigation under §1983. *Durgins vs. City of East St. Louis, Illinois*, 272 F.3d 841, 844 (7th Cir. 2001_). Rather, the aggrieved party must pursue all remedies through the state system and then seek certiorari from the United States Supreme Court. Id. When Rooker-Feldman applies, the federal court lacks jurisdiction, and a dismissal is not on the merits. Id.

> While in its most straight forward presentment, the Rooker Feldman doctrine bars federal jurisdiction when the federal plaintiff alleges that her injury was caused by a state court judgment, the exact parameters are less than clear because the doctrine is not limited to just those claims alleging that the sat court judgment itself caused the federal plaintiff's injury; the doctrine also precludes federal jurisdiction over claims inextricably intertwined with a state court determination. Discerning which claims are and which claims are not "inextricably intertwined" with a state judgment is a difficult process... [T]he pivotal inquiry in applying the doctrine is whether the federal plaintiff seeks to set aside a state court judgment or whether [s]he is, in fact, presenting an independent claim.

A.D. Brokaw v. Weaver, 305 F.3d 660, 664-665 (7th Cir. 2002) (internal quotations and citations omitted). Where a federal plaintiff complains of an injury that was not caused by the state court, but which the state court previously failed to rectify, the doctrine of preclusion applies. *Jensen v. Foley,* 295 F.3d 745, 748 (7th Cir. 2002). A case barred by preclusion is dismissed on its merits. Id.

For the reasons fully set forth on the record during the hearing, this Court finds that most of Plantiffs' claims are inextricably intertwined with the state court demolition determination. Therefore, they are barred by the Rooker-Feldman doctrine and are dismissed without prejudice for lack of jurisdiction.

The claims that are not barred under Rooker-Feldman involve (1) malicious prosecution and/or abuse of process against defendant Kildea for issuing tickets not related to the demolition and for certain testimony elicited in January 2001; (2) revocation of Plaintiffs' special use permit; and (3) Defendant Sax's inspection f the 607 East A Street property in November 2001. For the reasons explained on the record,

the claim arising from revocation of the special use permit is barred by the applicable statutes of limitation. Therefore, it is dismissed with prejudice. As also explained on the record, Plaintiffs lack standing to challenge the Belleville ordinance that resulted in their 1998 arrest because the arrest occurred outside the applicable limitations period; therefore, that claim is dismissed without prejudice.*

For the foregoing reason and for those more thoroughly expressed on the record during the March 31st hearing, Defendants' motion for summary judgment (Doc. 44) is GRANTED in part and DENIED in part. Plaintiffs are ORDERED to file, on or before April 14, 2003, an amended complaint containing only the remaining claims. Specifically, Plaintiffs may (1) assert a claim for malicious prosecution and/or abuse or process against Defendant Kildea and (2) challenge the November 2001 inspection by Defendant Sax. Defendants are ORDERED to file their responsive pleadings 10 days thereafter. Plaintiffs' motion to strike Defendants' affirmative defenses or, alternatively, for more definite statements (Docs. 40, 47) are DENIED as moot.

IT IS SO ORDERED.

Dated this 1st day of April, 2003.

G. PATRICK MURPHY

CHIEF UNITED STATES DISTRICT JUDGE

* Because the claim challenging the ordinance is dismissed without prejudice for lack of standing, the Court need not determine whether the Rooker-Feldman doctrince bars that claim.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

EDWARD and LEA ANN CALLICO	)	
Plaintiffs,	)	
vs.	)	
CITY OF BELLEVILLE, ILLINOIS	)	02-CV-560
A municipal corporation, et al.	)	GPM
Defendants.	)	

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court on Plaintiffs' motions to reconsider, for leave to file a brief in excess of the page limit, and for a one-day extension of time to file their amended complaint.

It is ORDERED and ADJUDGED that pursuant to the Memorandum and Order filed April 22, 2003, judgment is entered in favor of Defendants, CITY OF BELLEVILLE, ILLINOIS, JOHN E. KILDEA, MICHAEL H. ECKERT, JOSEPH STUMPF, WILLIAM SAX, PATRICIA DOERR, PAUL BAUMAN, and against Plaintiffs, EDWARD CALLICO AND LEA ANN CALLICO. This action is dismissed with prejudice for Plaintiffs' failure to comply with an order of this Court.

Dated 4/22/03

Norbert G. Jaworski, Clerk
Deputy Clerk

Approved: G. PATRICK MURPHY,
Chief U.S. District Judge:

APPENDIX G

65 ILCS 5/11-31-1(e)

5/11/31-1 Demolition, repair, enclosure or remediation

§11-31-1

(e) Each municipality may use the provisions of this subsection to expedite the removal of certain buildings that are a continuing hazard to the community in which they are located.

If a residential or commercial building is 3 stories or less in height as defined by the municipality's building code, and the corporate official designated to be in charge of enforcing the municipality's building code determines that the building is open and vacant and an immediate and continuing hazard to the community in which the building is located, then the official shall be authorized to post a notice not less than 2 feet by 2 feet in size on the front of the building. The notice shall be dated as of the date of the posting and shall state that unless the building is demolished, repaired or enclosed, and unless any garbage, debris, and other hazardous, noxious or unhealthy substances or materials are removed so that an immediate and continuing hazard to the community no longer exists, then the building may be demolished, repaired or enclosed, or any garbage, debris and other hazardous, noxious or unhealthy substances or materials may be removed, by the municipality.

Not later that 30 days following the posting of the notice, the municipality shall do all of the following:

(1) Cause to be sent, by certified mail, return receipt requested, a Notice to Remediate to all owners of record of the property, the beneficial owners of any Illinois land trust having title to the property, and all lienholders of record in the property, stating the intent of the municipality to

demolish, repair or enclose the building or remove any garbage, debris or other hazardous, noxious or unhealthy substances or materials if that action is not taken by the owner or owners.

(2) Cause to be published, in a newspaper published or circulated in the municipality where the building is located, a notice setting forth (i) the permanent tax index number and the address of the building, (ii) a statement that the property is open and vacant and constitutes an immediate and continuing hazard to the community, and (iii) a statement that the municipality intends to demolish, repair or enclose the building or remove any garbage, debris or other hazardous, noxious or unhealthy substances or materials if the owner or owners or lienholders of record fail to do so. This notice shall be published for 3 consecutive days.

(3) Cause to be recorded the Notice to Remediate mailed under paragraph (1) in the office of the recorder in the county in which the real estate is located or in the office of the registrar of titles of the county if the real estate is registered under the Registered Title (Torrens) Act.

Any person or persons with a current legal or equitable interest in the property objecting to the proposed actions of the corporate authorities may file his or her objection in an appropriate form in a court of competent jurisdiction.

If the building is not demolished, repaired or enclosed, or the garbage, debris or other hazardous, noxious or unhealthy substances or materials are not removed, within 30 days of mailing of the notice to the owners of record, the beneficial owners of any Illinois land trust having title to the property, and all lienholders of record in the property, or within 30 days of the last day of publication of the notice, whichever is later, the corporate authorities shall have the power to demolish, repair or enclose the building or to remove any

garbage, debris or other hazardous, noxious or unhealthy substances or materials.

The municipality may proceed to demolish, repair or enclose a building or remove any garbage, debris or other hazardous, noxious or unhealthy substances or materials under this subsection within a 120-day period following the date of the mailing of the notice if the appropriate official determines that the demolition, repair, enclosure or removal of any garbage, debris or other hazardous, noxious or unhealthy substances or materials is necessary to remedy the immediate and continuing hazard. If, however, before the municipality proceeds with any of the actions authorized by this subsection, any person with a legal or equitable interest in the property has sought a hearing under this subsection before a court and has served a copy of the complaint on the chief executive officer of the municipality, then the municipality shall not proceed with the demolition, repair, enclosure or removal of garbage, debris or other substances until the court determines that that action is necessary to remedy the hazard and issues an order authorizing the municipality to do so.

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Submitted July 1, 2004

Nos. 03-2845 & 03-2846	)Appeal from the United States
	)District Court for the
EDWARD V. CALLICO	)Southern District of Illinois.
LEA ANN CALLICO,	)
Plaintiffs-Appellants,	)Nos. 02 C560
v.	)
CITY OF BELLEVILLE,	)G. Patrick Murphy,
JOHN KILDEA, et al.	)Chief Judge
Defendants-Appellees.)	

APPELLANTS MOTION TO RECALL MANDATE PENDING DETERMINATION OF PLAINTIFFS' PETITION FOR WRIT OF CERTIORARI

EDWARD V. CALLICO
LEA ANN CALLICO
613 East A Street
Belleville, Illinois 62220
618-234-9911
Pro Se Appellants

Comes now, the plaintiffs/appellants Lea Ann Callico and Edward Callico (the "Callicos") and move this Court to recall the mandate issued on June 30, 2004, and stay the mandate pending the filing of a petition for a Writ of Certiorari in the Supreme Court, to be filed in the United States Supreme Court on or before September 22, 2004. As grounds for this motion, plaintiffs states the following:

1. This is an appeal from an April 1, 2003, partial summary judgment motion hearing entered based on the Rooker Feldman doctrine and a final judgment entered on April 22, 2003, based on failure to follow a Court order.

2. On May 25, 2004, this Court handed down its opinion in this appeal.

3. On June 7, 2004, plaintiffs filed their Motion for Rehearing/ Reconsideration in this appeal.

4. On June 22, 2004, the Court handed down its order denying defendants' Motion for Rehearing / Reconsideration. This order was not mailed until June 24, 2004. (Exhibit 1)

5. Because the Court's opinion implicates both the United States Supreme Court precedent and federal statutes and regulations regarding the jurisdiction of the federal court by acceptance based on 28 U.S.C. §§1331, 1341, 1343 and supplemental jurisdiction pursuant to 28 U.S.C. §1367(a) from state court and then dismissing for lack of jurisdiction based on Rooker Feldman doctrine; and the abuse of discretion of district courts on sanctions, this court has so far departed from the accepted and usual course of judicial proceedings and departure of a lower court as to call of an

exercise of the Supreme Court's supervisory power, the plaintiff s intend to seek a writ of certiorari from the United States Supreme Court in this matter.

6. Because the court's opinion on these issues conflicts with federal statutes and regulations, decisions by the federal court of appeals, and decisions of the United States Supreme Court, defendants believe there exists a strong possibility that the United States Supreme Court will grant a writ of certiorari in this case. Once the petition is granted and the issues briefed for the Supreme Court, plaintiffs believe that there is strong possibility that the Supreme Court will reverse this Court's opinion to the extent that it conflicts with federal law and United States Supreme Court precedent.

7. Further, the rehearing denial was issued on June 22, 2004, however, it was not postmarked until June 24, 2004, Over two days after the issuance. The postage paid envelope is attached as Exhibit 1. The envelope was not received until the evening of Monday, June 28, 2004. This allowed insufficient time for a motion to stay the mandate to be filed.

8. The Plaintiffs' have not waived further review of this Court's ruling. This is an order that Plaintiffs' have an opportunity to seek review in the Supreme Court.

9. Although the general rule is that once the mandate of an appellate court is transmitted, the court is divested of its jurisdiction of the cause, the Supreme Court has said that a court may possess the judicial power to recall a mandate for certain purposes, the Court has recognized that such power is not unlimited.

Other courts have held that a mandate once issued may not be recalled absent one of a few specific exceptions, such as when the judgment is a result of prejudicial mistake of fact or of fraud, where there is irregularity or error in the issuance of the mandate, or when the mandate does not correctly reflect the judgment rendered by the court.

10. There is an extreme irregularity in the issuance of this mandate, in the fact that this court held it for over two days, when time is of the essence. This has prejudiced the Callicos in that they did not have a timely opportunity to become aware of this court's decision.

While the Callicos have not received a copy of the mandate yet, it is not possible to determine if it correctly reflects the judgment rendered by the court, but by all intentions, this judgment is a result of prejudicial mistake of fact or of fraud. In reviewing a motion to recall a mandate, the Court must recognize there is authority under Illinois law for recalling a mandate in this context.

11. Because there has been no change in the position of the parties between the time the mandate was issued and the time of the filing of this motion, the mandate should be recalled.

In addition, because this case involves a jurisdictional issue, and there has been no other changes in position, this Court should recall the mandate.

12. A recall of the mandate and stay of this Court's mandate is necessary to prevent irreparable harm to the

plaintiffs. In contrast, defendants will not be harmed if the mandate is recalled and a stay is granted.

WHEREFORE, plaintiffs, the Callicos respectfully request that this court recall the mandate and stay the issuance of its mandate pending the determination of defendants' Petition for Writ of Certiorari to the United States Supreme Court, and enter its order granting the recall of mandate and stay on such terms as the court deems just and proper for the security of plaintiffs' rights.

Respectfully submitted,
Lea Ann Callico
Edward V. Callico
613 East A Street
Belleville, Illinois 62220

Exhibit 1 – Envelope from United States Court of Appeals Postmarked June 24, 2004.